

*** NOT FOR PUBLICATION ***

NO. 26067

IN THE SUPREME COURT OF THE STATE OF HAWAII

WILLIAM CHOY AND ME & MA CORPORATION, Plaintiffs-
Appellants/Cross-Appellees

vs.

WAILUA SHOPPING PLAZA AND STANLEY TOKIKAWA, Defendants-
Appellees/Cross-Appellants

and

DOES 1-10, Defendants
(CIV. NO. 97-0007)

WAILUA SHOPPING PLAZA, a Hawai'i limited partnership,
Plaintiff-Appellee

vs.

MEE & MA CORPORATION, a Hawai'i corporation, dba Mema Cuisine,
Defendant-Appellant
(CIV. NO. 01-1-0068)

APPEAL FROM THE FIFTH CIRCUIT COURT

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that the June 18, 2003 amended judgment is the appealable final judgment in consolidated Civil No. 97-0007 and Civil No. 01-1-0068. The circuit court granted appellants an extension of time to appeal the June 18, 2003 amended judgment and extended the time for appeal until September 4, 2003. However, HRAP 4(a)(4)(B) prohibited the circuit court from extending the appeal period beyond August 17, 2003. See HRAP 4(a)(4)(B) ("[N]o such extension shall exceed 30 days past the [original 30 day appeal period]"). Appellants were orally granted the extension of time to appeal on

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August 14, 2003, before expiration of the August 17, 2003 deadline imposed by HRAP 4(a)(4)(B), but appellants did not file their notice of appeal until September 4, 2003. The notice of appeal was filed beyond the extension period allowed by HRAP 4(a)(4)(B) and is an untimely appeal of the June 18, 2003 amended judgment. The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986). Thus, we lack jurisdiction over this appeal and cross-appeal. Therefore,

IT IS HEREBY ORDERED that this appeal and cross-appeal are dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 7, 2004.